Supreme Court, U.S.
FILED
OCT 2 7 2003
OFFICE OF THE CLERK

No. 03-505

In The

Supreme Court of the United States

ROGER BRASS,

Petitioner,

vs.

COUNTY OF LOS ANGELES,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF IN OPPOSITION

DAVID J. WILSON
MANNING & MARDER
KASS, ELLROD, RAMIREZ LLP
660 South Figueroa Street
23rd Floor
Los Angeles, California 90017

(213) 624-6900
(213) 624-6999 Fax
Counsel for Respondent

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

Did the routine jail procedures which caused incarceration of petitioner for 39 hours following a court's order for his release deprive him of a constitutionally protected interest? *Compare Brass v. County of Los Angeles*, 328 F.3d 1192 (9th Cir. 2003) (39-hour delay constitutional), *with Lewis v. O'Grady*, 853 F.2d 1366 (7th Cir. 1988) (delay of eleven hours may violate the Constitution).

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
INTRODUCTION	1
STATEMENT OF THE CASE	3
REASONS TO DENY THE PETITION	4
1. There Is No Conflict among the Circuits Because The Court of Appeals Relied on *Lewis v. O'Grady* and Did Not Reject *Lewis'* Reasoning or Ruling	4
2. This Case Does Not Present the Issue of Whether a County Jailer Can Arbitrarily Delay Initiation of a Prisoner's Release	6
CONCLUSION	7

TABLE OF AUTHORITIES

CASES

Lewis v. O'Grady, 853 F.2d 1366 (7th Cir. 1988) 4, 5, 6

INTRODUCTION

The Los Angeles County Jail system is the largest county jail in the world. With a daily inmate population of over 20,000, the Jail system operates detention facilities throughout the 4000 square miles of Los Angeles County, including a central jail facility in downtown Los Angeles and smaller detention facilities in each of the 42 courthouses in the County. In addition, the Jail receives prisoners from numerous smaller detention facilities operated by city police departments within a county made up of over 80 cities with a population of over 9,000,000. On an average day, the Jail system processes in and out between 400 and 500 inmates.

Coordinating the records among all these different physical locations and different public entities requires time. Although the court system and the Jail system each are computerized, in 1997 communication between the two systems was by paper. Thus, when a court ordered a prisoner released, a written order was issued. At the end of the day, each courthouse gathered its orders and sent the paperwork to downtown Los Angeles for processing. Once the paperwork for each day was digested by the Jail system, it began processing out the inmates who were eligible for release.

Roger Brass asserts that his constitutional rights were violated in 1997 because 39 hours elapsed from the time a judge ordered him released on his own recognizance (to return three weeks later) and the time he actually reached the street. Petitioner, however, did not present any evidence that this amount of time was unreasonable, or that his release was intentionally or arbitrarily delayed by the County. The County presented evidence that its

1997 procedures were reasonable: it took an average of 24 to 48 hours to process out a prisoner, including processing the paperwork, getting the prisoners to the Inmate Reception Center in downtown Los Angeles, fingerprinting them, and physically releasing them.

Based on this evidentiary record, the trial court properly granted summary judgment, and the Court of Appeals properly affirmed. Petitioner argues that certiorari should be granted here because the decision of the Court of Appeals creates a conflict among the circuits, and the case presents the issue of whether a jailer can arbitrarily continue to hold a prisoner after a court orders the prisoner released. Neither argument, however, supports granting certiorari here.

First, the opinion in this case does not create a conflict among the circuits because the decision very clearly rests on the specific facts of this case, including Petitioner's failure to present evidence that the delay in his release was unreasonable. The opinion does not purport to establish any bright-line rule for all county jails in the United States. It does not, therefore, conflict with other decisions from other circuits.

Los Angeles County is the most populous county in the United States, and it has the largest county jail system. A standard that is appropriate for Los Angeles County may not be appropriate for smaller counties with fewer facilities and a smaller inmate population. The Court of Appeals properly looked at the facts of this case, and rejected the opportunity to establish a bright-line rule for all county jails across the country. Thus, there is no conflict among the circuits.

Second, the issue of whether a jailer can arbitrarily continue to hold a prisoner after a court ordered the prisoner released is not presented by the facts of this case. There is no evidence that Petitioner was treated any differently than any other prisoner, and no evidence that his release was delayed arbitrarily. Petitioner's paperwork was processed through both the court system and the jail system in the normal way, and he was released as soon as the process was completed.

Neither issue raised by Petitioner is a valid basis for granting certiorari in this case. The Court, therefore, should deny the petition.

STATEMENT OF THE CASE

In April 1997, petitioner Roger Brass was reasonably, though mistakenly, arrested on a bench warrant for James Nichols. Petitioner closely matched the physical description of Nichols, and lived at the address given for Nichols in the warrant. Both men are white, 5'9" or 5'10", with brown hair and hazel eyes, and close to the same age. Nichols is missing a finger on his left hand; Petitioner is missing three fingers on his left hand. When Petitioner was interviewed, he gave noncommittal and evasive answers when asked if he was James Nichols. Petitioner was fingerprinted, but the computer that handles fingerprint analysis went down before the deputy who was interviewing Petitioner received a response to his inquiry.

Petitioner was booked on the bench warrant, and on April 9, 1997 he was timely brought before a judge. When Petitioner appeared in court, he asserted that he was not the man sought by the bench warrant, but no fingerprint

evidence was available to the court at that time. The trial court, therefore, ordered Petitioner released on his own recognizance, and ordered him to return on April 29, 1997 for the presentation to the court of fingerprint evidence. Pet. App. A at 2. Petitioner was processed out of the Los Angeles County Jail, and was released on April 11, 1997.

Petitioner asserts that his constitutional rights were violated because he was not released fast enough. The district court granted summary judgment in favor of the County of Los Angeles on this claim, based on the evidentiary record demonstrating that the County's procedures are reasonable. Pet. App. C at 10-12. The district court also relied on Petitioner's failure to produce evidence that the time period between the order for his release and his actual release was unreasonable. *Id.* The Court of Appeals affirmed, also based on this evidentiary balance in favor of the County. Pet. App. A at 13-16.

REASONS TO DENY THE PETITION

1. There Is No Conflict among the Circuits Because The Court of Appeals Relied on *Lewis v. O'Grady* and Did Not Reject *Lewis'* Reasoning or Ruling

Petitioner asserts that the opinion of the Court of Appeals conflicts with *Lewis v. O'Grady*, 853 F.2d 1366 (7th Cir. 1988), because *Lewis* overturned the granting of a directed verdict on the grounds that the issue of reasonableness should have gone to the jury. On the contrary, the opinion relies in part on *Lewis*, so it does not create any conflict. Both the district court and the Court of Appeals found that petitioner had not presented sufficient evidence to create any genuine issue of fact that needed to be

submitted to a jury. This ruling does not conflict with *Lewis*.

Lewis involved a man who was mistakenly arrested on a warrant, and was administratively determined to be not the man sought by the warrant. *Lewis*, 583 F.2d at 1369 ("It is critical to note that Lewis was not judicially released or discharged but was set free only after certain administrative steps to verify his identity had been taken."). The Court held that a jury should decide whether the 11-hour delay after the administrative determination of the plaintiff's identity was reasonable for the Cook County Jail system. *Id.*, at 1370.

Any issue of reasonableness can be resolved at summary judgment where all the evidence points in only one direction. Here, the district court expressly noted that *Lewis* did not control because plaintiff did not "produce any evidence sufficient to enable a reasonable jury to find in his favor. . . . " Pet. App. C at 12, fn. 4. The Court of Appeals also cited *Lewis* with approval, and then ruled that the Los Angeles County Jail's policy of starting the release process after it has processed all the paperwork received from all the courthouses in a single day was reasonable. Pet. App. A, at 15-16.

The opinion in this matter does not conflict with any other circuit because it does not purport to establish a nationwide standard for the amount of time a county jailer may take to process out a prisoner who has been ordered released. The Court of Appeals specifically eschewed such a bright line rule:

> Brass may have had a due process right to be released within a reasonable time after the reason for his detention ended. [citation omitted] The

> question here, however, is whether the County denied him that right because its policy or custom of processing court-ordered releases only after it has processed all other releases increased by an indeterminate amount the delay between the court order and his actual release. [¶] . . . In these circumstances, we cannot say that to the extent that the 39-hour delay in releasing Brass resulted from that policy or custom, it violated his constitutional right to due process of law.

Pet. App. A at 13-14.

Nothing in the opinion in this case creates a conflict with *Lewis v. O'Grady*, or any other circuit court decision. The Court of Appeals expressly avoided establishing a bright-line time deadline for all jails. There is no basis for granting certiorari.

2. This Case Does Not Present the Issue of Whether a County Jailer Can Arbitrarily Delay Initiation of a Prisoner's Release

Petitioner also asserts that certiorari should be granted to determine whether a jailer can arbitrarily delay initiation of a prisoner's release from county jail. This issue is not presented by the facts of this case. There is no evidence that anyone at the Los Angeles County Jail arbitrarily delayed the initiation of Petitioner's release.

On the contrary, the evidence shows that in 1997, it took between 24 and 48 hours to process a prisoner out of the Los Angeles County Jail. Petitioner was released in 39 hours, well within this average window of time. Petitioner, moreover, has no evidence that the initiation of his release was arbitrarily delayed.

In any large organization, it takes time to execute a decision. The decision of the Los Angeles County Superior Court to release Petitioner on his own recognizance "for this case only" has to be communicated through the court system and through the jail system. The order regarding Petitioner was not the only order issued by the courts that day. Until the Jail was able to digest all the information it received from the courts that day, it was unable to start processing out Petitioner, or any other prisoner ordered released that day.

In digesting this information, the County checked to see that there was no other reason to hold Petitioner or any of the other prisoners who were ordered released in a specific case. The evidence showed that this was not an arbitrary delay. This is not a basis for granting certiorari.

CONCLUSION

For all the foregoing reasons, the Court should deny the petition for certiorari.

Respectfully submitted,

DAVID J. WILSON
MANNING & MARDER
KASS, ELLROD, RAMIREZ LLP
660 South Figueroa Street
23rd Floor
Los Angeles, California 90017
(213) 624-6900
(213) 624-6999 Fax
Counsel for Respondent